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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON – PORTLAND DIVISION

**ECO-ENERGY, INC., a Tennessee
corporation; FC STONE, LLC, an Iowa
limited liability company,**

Plaintiff,

v.

**CASCADE GRAIN PRODUCTS, LLC,
An Oregon limited liability company,**

Defendants.

Cause No.: 3:10-cv-01441 BR

**RESTYLED COMPLAINT OF
ECO-ENERGY, INC. AGAINST
CASCADE GRAIN PRODUCTS, LLC
FOR SUBROGATION**

Plaintiff Eco-Energy, Inc. (“Eco-Energy”), as subrogor of American International Specialty Lines Insurance Company, now known as Chartis Specialty Lines Insurance Company (“AISLIC”) states its clam as follows:

**RESTYLED COMPLAINT OF ECO-
ENERGY, INC. AGAINST CASCADE
GRAIN PRODUCTS, LLC FOR
SUBROGATION**
3:10-cv-01441-BR - 1

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I. PARTIES, VENUE AND JURISDICTION

1. Eco-Energy is, at all times herein mentioned was, a corporation organized and existing under the laws of the state of Tennessee, with its principle place of business in Franklin, Tennessee. Eco-Energy has satisfied all prerequisites for the filing and maintenance of this lawsuit.
2. AISLIC is, at all times herein mentioned was, a corporation organized and existing under the state of Alaska with its principle place of business in New York and authorized to transact insurance in the state of Oregon. AISLIC is now an Illinois corporation with its principle place of business in New York. AISLIC has satisfied all prerequisites for the filing and maintenance of this lawsuit.
3. Cascade Grain Products, LLC (“Cascade Grain”) was and is an Oregon limited liability company with its principle place of business in Portland. At all times herein mentioned Cascade Grain was a supplier of Ethanol to Eco-Energy.
4. Venue and jurisdiction are proper under 28 U.S.C. §1334 and §1391.

II. FACTS

5. At all times herein mentioned, Eco Energy was insured against loss or damage under AISLIC Commercial General Liability and Pollution Legal Liability Policy no. 089595, with a policy period of December 2, 2008 to December 2, 2009 and AISLIC Commercial Umbrella Policy no. EGU3103456 with a policy period of December 2, 2008 to December 2, 2009.

6. In either late 2008 or early 2009 Eco-Energy purchased Ethanol from Cascade Grain in Clatskanie, Oregon. The Ethanol was shipped to Chevron and Conoco in Portland by barge. After it was loaded into the respective customer's tank it was allegedly found to have been "off spec on sulfides" and allegedly contaminated the Ethanol that was already in the tanks. This resulted in Chevron and Conoco having a total of 2,265,243 gallons of allegedly contaminated Ethanol.

7. Upon information and belief Chevron and Conoco demanded that Eco-Energy purchase the allegedly contaminated Ethanol, which Eco-Energy did at \$1.69 and \$1.74 per gallon respectively. Eco-Energy then reviewed its options for disposing of the contaminated Ethanol.

8. Eco-Energy found that the only viable option for disposing of the Ethanol was to transport it by barge to the Gulf Coast of the United States and sell it to The Ethanol Corporation at a discounted price.

9. Eco-Energy tendered the claim to AISLIC.

10. After investigating the claim AISLIC agreed to indemnify Eco-Energy for its legal liability arising out of the claims made by Chevron and Conoco.

11. AISLIC made payment to Eco-Energy of \$1,000,000 on or about May 14, 2009 for its legal liability arising out of the claims by Chevron and Conoco. On or about September 30, 2009 AISLIC paid an additional \$225,000 to Eco-Energy for its legal liability arising out of the claims by Chevron and Conoco. AISLIC paid Eco-Energy an

additional \$225,000 on or about October 9, 2009 and an additional sum of \$2,699,033.20 on or about November 2, 2009.

III. FIRST CAUSE OF ACTION

(SUBROGATION AGAINST CASCADE GRAIN)

12. Eco-Energy as the subrogor of AISLIC re-alleges and incorporates by reference the allegations in paragraphs 1-11, as those set forth fully herein.

13. Cascade Grain negligently refined and sold contaminated Ethanol to Eco-Energy which when mixed with the existing Ethanol tanks of Chevron and Conoco contaminated the entire contents of the tanks.

14. As a proximate result of Cascade Grain's negligence, as herein above alleged, Eco-Energy was legally liable and paid \$4,149,033.20 for damages arising out of the claims by Chevron and Conoco. Between May 14, 2009 and November 2, 2009 AISLIC paid Eco-Energy \$4,149,033.20 for the damage caused by Cascade Grain's negligence, pursuant to the terms of the AISLIC policies.

IV. PRAYER FOR RELIEF

Wherefore Eco-Energy, as the subrogor of AISLIC, prays for judgment as follows:

1. For the sum of \$1,000,000 paid by AISLIC to Eco-Energy and for interest thereon at the legal rate from and after May 14, 2009.
2. For the sum of \$225,000 paid by AISLIC to Eco-Energy and for interest thereon at the legal rate from and after September 30, 2009.

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3. For the sum of \$225,000 paid by AISLIC to Eco-Energy and for interest thereon at the legal rate from and after October 9, 2009.
4. For the sum of \$2,699,033.20 paid by AISLIC to Eco-Energy and for interest thereon at the legal rate from and after November 2, 2009.
5. For the costs of suit herein incurred;
6. For such other and further relief as the court may deem proper.

Dated this 25th day of January, 2011

GORDON & REES LLP

By: s/ Donald J. Verfurth
Donald J. Verfurth, OSB No. 066480
Attorneys for American International
Specialty Lines Insurance Company

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CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2011, I served a copy of the foregoing via the CM/ECF filing system on the following parties:

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